

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF NEW MEXICO,

Plaintiff,

vs.

No. CR 20-1481- JB

JOSHUA E. SALDANA,

Defendant.

**DEFENDANT SALDANA'S UNOPPOSED MOTION FOR EXTENSION OF TIME
IN WHICH TO FILE PRE- TRIAL MOTIONS. MOTION TO CONTINUE
TRIAL SCHEDULED FOR NOVEMBER 16, 2020**

COMES NOW Defendant Joshua E. Saldana, by and through his attorney of record Martin Lopez III, P.C. (Martin Lopez, III), and hereby moves the Court for an Order granting an extension of time in which to file pre-trial motions and continuing the trial currently scheduled for November 16, 2020 and as grounds states:

1. Defendant was arrested on October 9, 2020 and charged by Indictment filed on July 14, 2020 with Felon in Possession of a Firearm and Ammunition in violation of 18 U.S.C. § 922(g)(1) and 924. The alleged acts took place in Bernalillo County, in the District of New Mexico on or about April 11, 2020. (Doc. No. 2).

2. Undersigned Counsel was appointed on October 13, 2020 to represent Defendant Saldana in accordance with the Criminal Justice Act. (Doc. 7).

3. Defendant was arraigned before Magistrate Judge B. Paul Briones on October 15, 2020. (Doc. 12). The Court set a November 4, 2020 deadline for filing pre-trial motions.

4. On October 22, 2020 this Court scheduled and notified Defendant of the Jury Selection/Trial (November 16, 2020) in this matter. (Doc. 16).

5. Counsel for Defendant Saldana has only recently received discovery from the Government and cannot and will not be prepared to litigate this case to a jury by the Court's mandated deadlines as further detailed below. Furthermore, Counsel has commenced investigation and has not had

sufficient time to review the discovery with Mr. Saldana who is housed outside the Albuquerque area.

6. Due to the nature of the charges and the substantial potential jail sentence, additional time is needed for Counsel to consult with Mr. Saldana to make an informed decision concerning his defenses and/or resolution of the case. Accordingly, it would be unreasonable and unfair to force the Defendant and appointed Counsel to prepare crucial pretrial motions and prepare fully for trial if pre-trial investigation has not been conducted and complete discovery has not been provided. Counsel would submit that the current pre-trial motions deadline and trial setting would deprive Defendant of a meaningful opportunity of constitutionally appropriate assistance of counsel in making informed decisions in addressing the necessity of filing pre-trial motions and proceeding to litigate this case fully.

7. Therefore, in order to ensure protection of Mr. Saldana's rights and to fulfill Counsel's due diligence obligations to Defendant, Counsel would request an additional extension of time in which to file pretrial motions until January 11, 2021. This would accommodate receipt and review of all discovery, pre-trial investigation, conferences with Mr. Saldana, and possible settlement discussions with the Government.

8. Counsel would also request the Court continue trial on the merits of this case until the Court's March, 2021 calendar.

9. The Federal Rules of Procedure, the Speedy Trial Act and the Federal Rules of Evidence all contemplate the use of pre-trial resources in the effort to settle cases without trial, if possible. *See*, Fed. R. Crim. P. 11(c); 18 U.S.C. § 3161(b)(1)(G); Fed. R. Evid. 410. At this point, Mr. Saldana does not have complete information and discovery in order to make an informed decision as to whether to negotiate a plea or proceed to trial. To try a case where the prospect of settlement could be positively advanced is contrary to the public interest in efficient closure to criminal proceedings. In the event this matter is able to be resolved without the necessity of trial, judicial resources will likely be saved. Accordingly, the ends of justice are best served by granting the

extension of time in which to file motions and continuance of an early trial setting as it is anticipated that neither trial preparation or settlement negotiations will not be completed by the currently scheduled trial of November 16, 2020. Without the requested extension of time and continuance, a miscarriage of justice will result.

10. Counsel for Mr. Saldana files this motion to timely comply with the pretrial deadlines and orders as contained within the Court's Notice of Hearing. The relatively short time limits for trial and pretrial motions presented to undersigned Counsel and the complexity and number of transactions involved make this case labor intensive and extended.

11. Mr. Saldana is aware of the pre-trial and trial deadlines and understands that the filing of this Motion would be forthcoming and is in his best interests. Undersigned Counsel submits Mr. Saldana waives the time limits set forth within the Speedy Trial Act, 18 U.S.C. § 3161(c)(1) and the Sixth Amendment of the United States Constitution in making this request.

12. Counsel will supplement this motion, if necessary, to present Defendant's position if it is contrary to his formally waiving the time limits set forth within the Speedy Trial Act, 18 U.S.C. § 3161(c)(1) and the Sixth Amendment of the United States Constitution in making this request. Nevertheless, Counsel for Mr. Saldana submits he gives sufficient reasoning in his motion to continue to satisfy *USA v. Toombs*, 574 F.3d 1262 (10th Cir. 2009).

13. The ends of justice are best served by granting this extension and continuance as it is anticipated that the case will require additional time sufficient to complete either pretrial investigation or a negotiated disposition. The statements and averments made within this motion are not made for undue delay, but rather to provide Defendant with effective assistance of counsel.

14. Counsel for Defendant Romero contacted Assistant U.S. Attorney Niki Tapia-Brito, regarding her concurrence and she do not oppose this motion or the time limits requested.

WHEREFORE, Counsel respectfully requests that the Court grant an extension of time in which to file pretrial motions until January 11, 2021 and continuance of the trial of November 16, 2020 in this matter until the Court's March, 2021 trial calendar.

Respectfully submitted,

MARTIN LOPEZ, III
A Professional Corporation

Electronically filed November 2, 2020
Martin Lopez, III
Attorney for Defendant Saldana
1500 Mountain Rd. N. W.
Albuquerque, New Mexico 87104
Tele: (505) 243-2900

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd of November, 2020, I filed the foregoing pleading electronically through the CM/ECF system, which caused the following counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing to the following:

Niki Tapia-Brito, AUSA
E-Mail: niki.tapia-brito@usdoj.gov

Electronically filed November 2, 2020
Martin Lopez, III